



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

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REGIONAL
ADMINISTRATOR'S
DIVISION

April 10, 2023

Kylie M. Webb, Project Manager
U.S. Army Corps of Engineers
4735 East Marginal Way South, Building 1202
Seattle, Washington 98134

Dear Kylie M. Webb:

The U.S. Environmental Protection Agency has reviewed U.S. Army Corps of Engineer's Notice of Preparation of an Environmental Assessment for the Skagit Diking Districts 1, 3, and 12 Levee Rehabilitation Projects in Skagit County, Washington (Corps Reference Number PMP-23-04; EPA Project Number 23-0015-USACE). EPA has conducted its review pursuant to the National Environmental Policy Act and our review authority under Section 309 of the Clean Air Act. The CAA Section 309 role is unique to EPA and requires EPA to review and comment publicly on any proposed federal action subject to NEPA's environmental impact statement requirement.

The Notice of Preparation (NOP) discusses four initial alternatives for consideration in the NEPA analysis to return levee systems to the 50-year level of flood protection to protect lives and property. Of those initial four alternatives, the NOP identifies two to be evaluated in the Environmental Assessment (EA): a no action alternative (Alternative 1) and the preferred repair-in-kind alternative (Alternative 4). The preferred alternative consists of repairing 2,425 feet of levee by reconstructing and re-armoring the bank. The repairs will occur across multiple locations in three diking districts that were damaged during high flow events in 2021.

EPA did not find significant environmental concerns to be addressed in the EA. EPA's recommendations for the NEPA analysis included in the enclosure are related to Environmental Justice, climate change and reasonably foreseeable future conditions, alternatives discussion, green infrastructure technologies, and water quality impacts.

Thank you for the opportunity to review the NOP for this project. If you have questions about this review, please contact Scott Schlieff of my staff at (206) 553-4032 and Schlieff.Scott@epa.gov, or me, at (206) 553-1774 or at Chu.Rebecca@epa.gov.

Sincerely,

for Rebecca Chu, Chief
Policy and Environmental Review Branch

Enclosure

**U.S. EPA Detailed Comments on the
Notice of Preparation for Skagit Levee Rehabilitation Projects
Skagit County, Washington
April 2023**

Environmental Justice

Executive Order 12898 on *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* directs federal agencies to identify and address the disproportionately high and adverse human health effects of federal actions on minority and low-income populations, to the greatest extent practicable and permitted by law. We recommend EO 13985 on *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* is also incorporated into the NEPA analysis because it includes a modern definition of equity that clarifies a broader approach.

To identify potential EJ concerns, EPA recommends applying two interactive web-based screening tools: the Environmental Justice Screening and Mapping Tool (EJScreen, Version 2.1)¹ and the Washington Environmental Health Disparities Map (WEHD, Version 2.0).² EPA considers a project to be in an area of potential EJ concern when an EJScreen analysis for the project area shows one or more of the twelve EJ Indices at or above the 80th percentile in the nation and/or state. At a minimum, EPA recommends an EJ analysis consider the EJScreen. The WEHD can also be used to assist Federal agencies compare communities across the state for environmental health disparities. WEHD displays measures, such as poverty, health risks and diseases, and exposures to certain types and sources of pollution. EJScreen and the Climate and Economic Justice Screening Tool (CEJST) are complementary tools.

It is important to consider all areas impacted by the proposed action. Areas of impact can be a single block group or span across several block groups and communities.³ When assessing large geographic areas, consider the individual block groups within the project area in addition to an area-wide assessment. Important caveats and uncertainties apply to this screening-level information, so it is important to understand the limitations on appropriate interpretations and applications of these indicators.⁴ As the screening tool does not provide data on every environmental impact and demographic factor that may be relevant to a particular location and/or proposed project, consider additional information in an EJ analysis to supplement EJScreen outputs. Further review or outreach may be necessary for the proposed action.

To address these potential concerns, EPA recommends:

- Applying methods from "Environmental Justice Interagency Working Group Promising Practices for EJ Methodologies in NEPA Reviews" report, or the Promising Practices Report, to this

¹ <https://www.epa.gov/ejscreen>. Accessed 4/6/2023.

² <https://doh.wa.gov/data-and-statistical-reports/washington-tracking-network-wtn/washington-environmental-health-disparities-map>. Accessed 4/6/2023.

³ Agencies should define community as “either a group of individuals living in geographic proximity to one another, or a geographically dispersed set of individuals (such as migrant workers or Native Americans), where either type of group experiences common conditions” (Interim Justice40 Guidance – Executive Order 14008 on Tackling the Climate Crisis at Home and Abroad, January 27, 2021).

⁴ <https://www.epa.gov/ejscreen/limitations-and-caveats-using-ejscreen> Accessed 4/6/2023.

project.⁵ The Promising Practices Report is a compilation of methodologies gleaned from current agency practices concerning the interface of EJ considerations through NEPA processes.

- Characterizing project sites with specific information or data related to EJ concerns.⁶
- Describing potential EJ concerns for all EJ Indices at or above the 80th percentile in the state and/or nation.
- Describing block groups that contain the proposed action and at a minimum, a one-mile radius around those areas.
- Describing individual block groups within the project area in addition to an area-wide assessment.
- Supplementing data with county level reports, local knowledge, and indigenous traditional ecological knowledge.

Climate Change

EPA recommends the NEPA document assess how the project addresses ongoing and projected regional and local climate change and any reasonably foreseeable future conditions to ensure robust climate resilience/adaption planning for operations and maintenance project design. The long-lived nature of infrastructure makes consideration of the ongoing and projected impacts of climate change even more important. It may not be sufficient to ensure resilience of the project to risks under current climate conditions only. Considering potential climate change impacts helps ensure that proposed investments continue to function and provide benefits as climate conditions change over time.

EPA recommends that NEPA analysis include:

- An assessment of the extent to which the proposed project is consistent with U.S. and global policy to limit greenhouse gas emissions.
- Identification of how climate resiliency has been considered in the proposed action and alternatives.
- An assessment of the additive and synergistic impacts of climate change upon local natural resources, seasonal water patterns, and wildfires.
- Existing and reasonably foreseeable environmental trends related to a changing regional and local climate.
- Reasonably foreseeable effects that a currently changing climate will have on the proposed project and its abilities to function properly and provide flood protection.
- An assessment that relates climate change to environmental justice and human health impacts.

Given the predictions of increased severity and frequency of precipitation events that could exacerbate degradation of existing levee systems, EPA recommends the NEPA document discuss consideration of programmatic, system-wide approaches to maintaining watershed health, including work with other diking districts along the Skagit River.

⁵ https://www.epa.gov/sites/default/files/2016-08/documents/nepa_promising_practices_document_2016.pdf. Accessed 4/6/2023.

⁶ For more information about potential EJ concerns, refer to the July 21, 2021, Memorandum for the Heads of Departments and Agencies Interim Implementation Guidance for the Justice40 Initiative. Accessible at: <https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf>. Accessed 4/6/2023.

Alternatives Analysis

The alternatives analysis for the project will evaluate two alternatives: the no action alternative and the proposed action, which involves in-kind replacement or repair of the existing levee systems. The non-structural and bank layback alternatives were not carried forward for consideration. EPA recommends that within the proposed alternative, a more robust consideration of habitat enhancement measures is included, such as:

- Options for the species to be used in plantings.
- Specifications for large woody debris or embedded logs that will be used as habitat and refuge for juvenile fish species. Include what reference stream data was used in the determination.
- Development of additional beneficial uses of the levee area, such as viewing platforms and educational signage.
- Evaluation of areas of the levee prone to damage during high flow events, flood fight activities, and maintenance; establishment of access routes that avoid ecologically sensitive areas in response to the evaluation.
- A discussion of any future planning related to non-structural and bank layback options for maintaining watershed health.

Green Infrastructure Technologies

EPA recommends the NEPA document discuss efforts to minimize the use of pollution generating materials during construction. For example, if the project involves generating new impervious surfaces, consider de-paving other areas to achieve no net increase in impervious surface. Include opportunities to minimize impacts from storm water such as green infrastructure technologies, such as permeable paving systems, rainwater harvesting ideas, and bioswales.⁷ Reduce pollution generating materials, such as products with inadvertent PCBs.⁸

Impacts to Water Quality and Aquatic Resources

Clean Water Act (CWA) Section 402

In Washington, EPA issues National Pollutant Discharge Elimination System (NPDES) permits for federally owned facilities and permits on tribal lands; EPA has delegated authority to issue other NPDES permits to the Washington Department of Ecology.⁹

EPA recommends the NEPA analysis identify any discharges to Waters of the U.S. (WOTUS) that are known, or are likely, to occur during construction and operation of the project and how these discharges would be managed and minimized. Identify the NPDES permits that will be obtained for the construction phase, new (or modifications to) existing permits for operations, and how any previous permit exceedances could be prevented by incorporating pollution prevention measures into the project.

⁷ <https://www.epa.gov/green-infrastructure/what-green-infrastructure>. Accessed 4/6/2023.

⁸ <https://www.epa.gov/sites/default/files/2021-04/documents/p2-pcb-factsheet-508.pdf>. Accessed 4/6/2023.

⁹ <https://www.epa.gov/npdes/npdes-state-program-authority> Accessed 4/6/2023.